IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION M NO.1 OF 2004
WITH
FAMILY COURT **APPEAL ST NO.40517 OF 200**3

Adhyatmam Bhamini,
residing at Damodar Park Building,
No.3-E, Flat No.602, Swagat CHS Ltd
Off. LBS marg, Ghatkopar (W),
Mumbai 400 086 .. Applicant

Vs

Jagdish Ambalal Shah,
73 years, Businessman,
Indian Inhabitant, residing at
45/7-C, Anand Darshan, 13,
Dr.Gopalrao Deshmukh Marg,
Bombay 25 and carrying on
business at M/s Formacators, 20
Evergreen Industrial Estate, Off
Dr.E.Moses Road, Bombay-11. .. Respondent.

Mr Mihir Desai, for the applicant.
Ms Amarjit Kaur & Ms Nalini Chagha, for the resopndent.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.

DATE : APRIL 25, 2005.

ORAL JUDGMENT : (PER S.B.MHASE, J.)

1. Heard both sides.

2. This is delay condonation application for condoning delay of 81 days. In the application, the applicant has not calculated delay and simply prayed for condonation of delay. Office has pointed out that there is delay of 81 days. However, we find

that the decree under challenge is dated 24.1.2003 and the appeal has been filed in 257 days, the application for certified copy of the Judgment was made on 27.1.2003 and the copy was ready and delivered on 11.7.2003. Thus, 165 days are requisite for copying. Therefore, the appeal has to be filed within a period of 165 days plus 30 days, i.e. 195 days. Therefore, in the present case, there is delay of 257-195 = 62 days. The question, therefore, for our consideration is whether such a delay be condoned?

3. The applicant herein has filed Petition No.B-40 of 1992 after having contested the earlier matrimonial litigation right upto the Apex Court. In this petition, the wife has claimed half share in flat no.45/7-C, Anand Darshan Co-operative Housing Society, Dr.Gopalrao Deshmukh Marg, Mumbai, since according to her, it is the property purchased by the husband and wife together. As against that, the claim of the husband is that it is his exclusive property.

4. The ground for condonation of delay, as revealed from the application, is as follows. The applicant accepts that she received a certified copy of the order on 11.7.2003 but she has further averred that subsequent to that, for a period of about 75

days the applicant had gone to USA to meet her son who is a resident of USA. After coming back, she was not keeping well. Besides she wanted to book an Advocate and since the documentary evidence, pleadings and the matter were voluminous it took some time for an Advocate to go through the papers and prepare the appeal. In these circumstances, approximately two months and ten days delay has been caused and, therefore, she claims condonation of delay.

5. It is to be noted that on 11.7.2003 when she received a copy of the Judgment, the applicant was very much in India and sufficient time was available to her for filing the appeal. Inspite of that, she left for USA without filing an appeal and thus she wasted time for 75 days. She states that after return she was ill. However, what was her illness is not disclosed. It is further not disclosed whether she was treated for the ailment and,if so, who was the doctor. Similarly the illness will not make out a case for condonation of delay. It must be an illness which would have incapacitated her to approach the Court. Such illness has not been brought on record. Above all, what is the period of illness is not reflected. So far as preparation of the appeal by the advocate is concerned, she has not

disclosed as to on what date she had approached the advocate and how much time was taken by the advocate. Apart from that, the concerned Advocate has not filed an affidavit pointing out that as to how much time he has consumed in preparing the appeal, the matter being voluminous. Though we are expected to be liberal one in condonation of delay, it is not appropriate to encourage filing of such scanty application without any particulars and explanation for the conduct of the applicant and we find that the delay has not been properly explained and no sufficient cause has been shown.

6. Apart from that, from the reply it is revealed, and we find substance in the said averment that this proceeding is initiated for harassing the husband. It is stated in para 4 of the affidavit that the applicant is a divorcee and the divorce is granted in 1993 and that the husband has been regularly paying her maintenance of Rs.5000/-per month. The husband has also provided her an independent flat and the applicant-wife is in possession and control over his jewellery and gold ornaments. He is a man of 77 years of age. All these show that the matter was properly settled earlier and it would have been open for the wife to claim the said property at the time of the said

settlement. This application is an attempt to dug out a doom for the purpose of litigation.

7. Since it is a matter of wife claiming a flat as a result of contribution, we have also heard the learned counsel on merits. The learned counsel have also made available the depositions of witnesses examined before the trial and with the help of the learned counsel we have gone through those depositions. After going through the depositions, what we have noticed is that the observations and the findings recorded by the trial Court on issue no.1, more specifically para nos.9,11 and 13 and 15, satisfy us that on the basis of the preponderance of probabilities, the trial Court has properly evaluated the material and concluded that the flat exclusively belonged to the respondent-husband. Taking into consideration the overall view of the matter, we do not find any substance in the matter. The delay condonation application is hereby rejected. Consequently, the Family Court Appeal stands rejected.

(D.B.BHOSALE, J.) **(S.B.MHASE, J.)**

/rrt/db-05/db-25405/cam1-fca

HIGH COURT
CIVILI APPELLATE SIDE
CIVIL APPLICATION M.NO.1 OF 2004
WITH
FAMILY COURT APPEAL ST NO.40517 OF 2003

Date of Judgment:

APRIL 25, 2005

For approval and signature

THE HON'BLE MR.JUSTICE S.B.MHASE.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?